

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

**VOCALSPACE, LLC,**

**Plaintiff,**

**v.**

**DANIEL D. LORENZO and  
LARKSPARK CORPORATION,**

**Defendants.**

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**Case No. 4:09-cv-00350**

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**PLAINTIFF'S EMERGENCY MOTION TO AMEND SCHEDULING ORDER**

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Plaintiff, VocalSpace LLC files this Emergency Motion to Amend Scheduling Order, and would respectfully show this Court as follow:

**I. INTRODUCTION**

On January 7, 2011, the Court entered its Amended Scheduling Order setting, among others, the following deadlines:

<b>Date</b>	<b>Deadline</b>
February 14, 2011	Mediation
February 21, 2011	Joint Pretrial Order, Motions in Limine, Jury Instructions
March 18, 2011	Pre-trial Conference
March 21, 2011	Trial

The Court also provided deadlines for summary judgment briefing which concluded on February 11, 2011. The parties filed their summary judgment briefs pursuant to the deadlines. However,

due to inclement weather, a trial setting, and the travel schedules of the parties and counsel, the parties have not yet been able to mediate the case. At present the parties are contemplating mediation before the first week of March. In order to avoid unnecessary expense and in order to take advantage of the possibility of the issues being simplified after mediation (or through summary judgment), Plaintiff requests that the deadline for filing the Joint Pretrial Order, Motions in Limine and Jury Instructions be moved to March 4, 2011. Also, Plaintiff requests that the deadline for Responses to Motions in Limine be set for March 11, 2011.

## **II. ARGUMENT AND AUTHORITIES**

“Rule 16(b) provides that once a scheduling order has been entered, it ‘may be modified only for good cause and with the judge’s consent.’” *Marathon Financial Ins., Inc. v. Ford Motor Co.*, 591 F.3d 458, 470 (5th Cir.2009) (quoting Fed. R. Civ. P. 16(b)). In the present case, there is good cause to amend the scheduling order.

Good cause exists because the parties have not yet mediated. Inclement weather, Plaintiff’s lead counsel being set for trial, and the travel plans of the respective parties and counsel have all prevented the parties from mediating to date. The parties are in the process of setting a date for mediation as soon as possible. While a good faith effort is being made to bring this case to a conclusion, Plaintiff believes an extension of the current deadline for pre-trial filings will increase the possibility for settlement at mediation and also allow the parties to take advantage of the possible simplification of issues after mediation.

Good cause also exists because amending the scheduling order will allow the parties to take advantage of any simplification of the issues that may result from the anticipated summary judgment rulings before the newly requested deadline. In the event that the Court rules upon the

pending summary judgment motion prior to the newly requested deadline, the burden upon the parties in making pre-trial disclosures could be significantly alleviated.

This Motion is not brought for the purposes of delay. Rather, it is brought because good cause exists to reset the deadlines as requested. In fact, the requested scheduling order changes can be made without changing the date of the pre-trial conference or trial.

### **III. CONCLUSION**

For these reasons, Plaintiff asks the Court to grant this Emergency Motion To Amend Scheduling Order and extend the deadlines to the dates reflected in the attached proposed scheduling order.

Respectfully submitted,

/s/ Brian A. Colao

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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on February 17, 2011.

/s/ Brian A. Colao

Brian A. Colao

**CERTIFICATE OF CONFERENCE**

Counsel for Plaintiff has conferred with counsel for Defendants, on February 17, 2011 and Defendants oppose Plaintiff's request to modify the scheduling order.

/s/ Brian A. Colao

Brian A. Colao